IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.1195 OF 2001

IN

WRIT PETITION NO.1599 OF 1997

Rajesh Mirkar and ors. ...Appellants

v/s

Lallubhai Amichand and anr. ...Respondents

Mr N.M. Ganguli for Appellants.

Ms Meena Doshi for Respondents.

CORAM : D.K. DESHMUKH AND J.H. BHATIA JJ.

DATE : 11TH OCTOBER 2007.

P.C. :-

1. By this appeal, the appellants challenge the order dated 8th October 2001 passed by the learned Single Judge of this Court in writ petition No.1599 of 1997. That writ petition was filed by the present appellants against the award passed by the Labour Court, Mumbai in reference (IDA) Nos.359 to 364 of 1991. By that ward, the Labour Court had rejected the references. The facts that are material and relevant for deciding this appeal are that the present appellants were employed by the respondent No.1. The respondent No.1 was engaged in the business of manufacture of aluminium containers and other allied products in the industrial establishment situated at Sion Matunga Estate, Sion, Mumbai 400 022 and about 300 workers were employed in its establishment. The respondent No.1 filed complaint (ULP) No.356 of 1982 against the appellants alleging that on and from 4th March 1982 they had engaged in unfair labour practice under Item Nos.5 and 6 of Schedule III of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act 1971 (hereinafter called as the said Act). In that complaint, it was alleged that the respondents were members of the Factory Committee of the Union and in

that capacity on or from 4th March 1982 they have started instigating other workers and following coercive action of willful go-slow. That complaint was decided by the Industrial Court by order dated 19th November 1982. All the appellants were joined as respondents in that complaint. The President of Association of Engineering Workers was also joined as respondents, however, on 11th August 1982, his name was deleted and the complaint was proceeded only against the appellants. The appellants objected to the maintainability of the complaint.

2. By its order, the Industrial Court rejected that objection relying on the judgment of the Division Bench in the case of Apar Pvt.Ltd. v/s Shri S.R. Samant and others, reported in 1980(II) LLJ 344. In the order passed by the Industrial Court, following findings which are relevant for the present purpose are recorded which are quoted below :-

> "However, since 4th march 1982, they have willfully slowed down the production and have been giving not even average production, but even far below the agreed minimum production."

. The Industrial Court further recorded that under instructions from the present appellants, the

employees from the Despatch Section refused to load the lorry. It appears that while the complaint before the Industrial Court was pending, on 17th September 1982, show cause notice was given to the appellants alleging that they are guilty of misconduct. The misconduct that was alleged against the appellants broadly tallies with the allegations that were made against them in the complaint before the Industrial Court. During the pendency of the enquiry, the judgment of the Industrial Court came. In the departmental enquiry, the appellants were held guilty of misconduct and they were removed from service. The industrial disputes were raised and they were referred to the Labour court. The Labour Court made an award, dismissing all the disputes. The Labour Court mainly relied on the finding recorded by the Industrial Court in the above referred complaint, where categorical findings were recorded, showing that the appellants were guilty of misconduct alleged against them. The Labour Court also held that the departmental enquiry held against the appellants is legal. the finding recorded in the enquiry was proper. Against the award of the Industrial Court, writ petition was filed in this Court being writ petition No.1559 of 1993. that writ petition, as observed above, has been dismissed by the learned single Judge.

3. Firstly, the learned counsel appearing for

appellants submitted that the complaint filed by the employer in which the order was passed was not maintainable because though the Trade Union was joined initially as a party, it was subsequently deleted. According to him, a complaint alleging unfair labour practice against only employees under Item Nos.5 and 6 of Schedule III of the said Act is not maintainable. However, perusal of the judgment of the Division Bench of this Court in the case of Apar (Pvt.) Ltd., v/s S.R. Samant and others, which has been relied on by the Industrial Court, shows that such a complaint is maintainable and therefore, we cannot accept that the order of the Industrial Court in complaint (ULP) No.356 of 1982 was an order made without jurisdiction. When we pointed out to the learned counsel appearing for appellants that the charges levelled in the charge-sheet that was issued against the appellants and the allegations that were made in the complaint filed by the employer and the findings recorded by the Industrial Court in its order shows that even ignoring the findings recorded in the departmental enquiry, those charges are clearly proved against the appellants, the learned counsel appearing for appellants submitted that the findings recorded by the Industrial Court which have admittedly become final between the parties, show that the appellants are collectively responsible for the misconduct or allegations that have been made in the

complaint, but it does not show what was the role played by each of them. In our opinion, this submission is not well founded. The role that has been attributed to them is giving directions to the other employees not to carry out work that is assigned to them or deliberately working slow. In our opinion, if according to the appellants, it was necessary to establish their individual conduct, it was for them to challenge the order of the Industrial Court directly. They cannot be permitted to challenge the finding recorded by the Industrial Court in the complaint filed by the employer collaterally. In our opinion, the findings that have been recorded by the Industrial Court in the order dated 19th November 1982 are findings recorded by the competent Court between the same parties and on the same subject matter and therefore, those findings are binding on the appellants.

4. The learned counsel then submitted that though the findings have been recorded by the Industrial Court in the complaint filed by the employer against the appellants in view of the provisions of the Standing Orders when charge-sheet was issued to the employees, each charge should have been separately proved against all the employees and merely because findings have been recorded by the Industrial Court, the appellants could not have been held guilty. In our opinion, as the

subject matter of the allegations made in the complaint before the Industrial Court filed by the employer and in the departmental enquiry was substantially the same, the employer was fully justified in relying on the findings recorded by the Industrial Court and therefore in our opinion, no fault can be found with the procedure followed by the employer in holding departmental enquiry and imposing punishment. In our opinion, the most important aspect is that there are positive findings recorded in the order of the Industrial Court holding that the appellants are guilty of misconduct, which has resulted in hampering the work of the employer. Those findings are findings of fact. When the Court hearing writ petition finds that the appellants are guilty of such kind of misconduct, in our opinion, the writ Court will not be justified in doing anything which would help such kind of workers. In our opinion, the learned single Judge therefore rightly declined to interfere with the order of the Labour Court holding that the punishment imposed on the appellants is justified considering their conduct.

5. After having gone through the record, we find that it cannot be said that by the order impugned in the appeal, any injustice is done to the appellants. On the contrary, we find that the orders do substantial justice between the parties and require no interference at the

hands of this Court. The appeal therefore fails and is dismissed with no order as to costs.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.

(D.K. DESHMUKH J.)

(J.H. BHATIA J.)